

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DORA JACKSON, on behalf of herself and all others similarly situated,	:	
	:	
	:	
Plaintiff,	:	C. A. No. 05-269 - JJF
	:	
v.	:	Class Action
	:	
	:	Jury Trial Demanded
WAL-MART STORES, INC., a Delaware corporation, and SAM'S WEST, INC., an Arkansas corporation,	:	
	:	
	:	
	:	
Defendants.	:	

**DEFENDANTS' MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)**


Defendants, Wal-Mart Stores, Inc., and Sam's West, Inc., by their undersigned attorneys, hereby move this Honorable Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to enter an Order dismissing Plaintiff's Complaint, and in support thereof aver the following:

1. Plaintiff's Third Cause of Action fails to state a claim upon which relief can be granted for conversion against Defendants.
2. Plaintiff's Fourth Cause of Action fails to state a claim upon which relief can be granted for unjust enrichment/quantum meruit/restitution against Defendants.
3. Plaintiff's Complaint fails to state a claim upon which relief can be granted against Defendants to the extent that it seeks to recover damages for a period in excess of one year, the applicable limitations period.

WHEREFORE, defendants, Wal-Mart Stores, Inc, and Sam's West, Inc., respectfully request that the Court enter an Order pursuant to Rule 12(b)(6), Fed. R. Civ. P.,

dismissing Plaintiff's Third and Fourth Causes of Action and dismissing Plaintiff's claims to the extent that she seeks to recover damages for a period in excess of one year.

WOLF, BLOCK, SCHORR and SOLIS-COHEN, LLP

By: 
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Attorneys for Defendants, Wal-Mart Stores, Inc.
and Sam's West, Inc.

Dated: May 12, 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**DORA JACKSON, on behalf of
herself and all others similarly
situated,**

Plaintiff,

V.

**WAL-MART STORES, INC., a
Delaware corporation, and
SAM'S WEST, INC., an Arkansas
corporation,**

Defendants.

C. A. No. 05- 269 - JJF

Class Action

Jury Trial Demanded

ORDER

AND NOW, this ____ day of _____, 2005, upon consideration of Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the answer and reply thereto, it is hereby ORDERED AND DECREED that said Motion is GRANTED.

IT IS FURTHER ORDERED as follows:

1. Plaintiff's Third Cause of Action for conversion is DISMISSED.
2. Plaintiff's Fourth Cause of Action for unjust enrichment/quantum meruit/restitution is DISMISSED.
3. Plaintiff's claims are DISMISSED to the extent that Plaintiff seeks to recover damages prior to April 4, 2004, one year prior to the filing of her Complaint.

SO ORDERED:

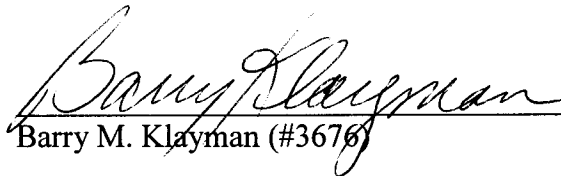
J.

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Motion to Dismiss Pursuant to Rule 12(b)(6) to be served upon all counsel of record in the manner indicated, to their respective addresses as follows:

BY E-FILING AND FIRST CLASS MAIL, U.S. POSTAGE PREPAID:

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Barry M. Klayman (#3676)

Dated: May 12, 2005